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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CALIFORNIA Date: MAR 10 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresenting a material fact while attempting to procure admission into the United States on October 15, 1995. She married a naturalized U.S. citizen on December 30, 2000 and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her U.S. citizen spouse and daughter.

The Interim District Director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Interim District Director Decision* dated April 21, 2003

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects that the applicant knowingly attempted to use a Border Crossing Card (Form I-186) that did not belong to her to gain admission into the United States by fraud and willful misrepresentation of a material fact. During her interview the applicant admitted that she purchased the document for $50 from an unknown vendor in Tijuana, Mexico and that her intention was to enter the United States in order to seek employment and to reside in the United States.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family

member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In the present case, the applicant must demonstrate extreme hardship to his U.S. citizen spouse.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the BIA deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel asserts that Citizen and Immigration Services, "CIS" failed to correctly assess extreme hardship to her spouse (Mr. Pacheco). In support of this assertion, counsel submitted a brief stating that Mr. [redacted]family ties are in the United States and that he only has cousins residing in Mexico. Additionally, counsel asserts that if the applicant's waiver application was denied Mr[redacted]may be forced to relocate to Mexico with her and he might not find sufficient work. Counsel states that the applicant's daughter suffers from Type 1 Diabetes and if Mr.[redacted]decides to relocate to Mexico, their daughter would not be able to receive proper medical treatment. If Mr[redacted]ecides to stay in the United States counsel asserts that he would suffer financial hardship because he would be force to pay for additional day care as well as for additional medical care for his daughter.

There are no laws that require Mr.[redacted]to leave the United States and live abroad. In *Silverman v. Rogers*, 437 F. 2d 102 (1st Cir. 1970), the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more that to say that the residence of one of the marriage partners may not be in the United States." The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represent the type of inconvenience and hardship experienced by the families of most aliens being deported. *See Shooshtary v. INS,* 39 F. 3d 1049 (9th Cir. 1994).

As mentioned, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident *spouse or parent* of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. Counsel's assertions regarding the hardship the applicant's child would suffer will thus not be considered.

In addition the record reflects that on October 18, 1995 the applicant was removed from the United States pursuant to an order of deportation. During her adjustment of status interview and in an affidavit provided on June 23, 2002 the applicant admitted that she re-entered the United States about a month after her removal without a lawful admission or parole and without permission to reapply for admission in violation of § 276 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1326 (a felony). The applicant is therefore inadmissible under § 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A).

The AAO finds that section 241(a)(5) of the Act, 8 U.S.C. 1231(a)(5) applies in this matter and the applicant is not eligible and may not apply for any relief.

Section 241(a) detention, release, and removal of aliens ordered removed states in pertinent part-

> (5) reinstatement of removal orders against aliens illegally reentering.- if the attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the aliens is not eligible and may not apply for any relief under this Act [chapter], and the aliens shall be removed under the prior order at any time after reentry.

The applicant was removed from the United States on October 18, 1995 and reentered illegally on or about November 1995. She has never been granted permission to reapply for admission. The applicant is subject to the provision of § 241(a)(5) of the Act and she is not eligible for any relief under this Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing the applicant's appeal for a waiver of inadmissibility under section 212(a)(6)(C). Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.